



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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Preston Bryant
Secretary of Natural Resources

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT ISSUED TO

**Bath County Service Authority
VPDES Permit No. VA0066303**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a), (8d), and (11) between the State Water Control Board and the Bath County Service Authority for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.

6. "BCSA" means the Bath County Service Authority, the owner/operator of the Hot Springs Regional STP.
7. "Facility" means the Hot Springs Regional STP, located on State Route 615, one mile west of Hot Springs, Virginia, in Bath County, operating under VPDES Permit No. VA0066303.
8. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
9. "NOV" means Notice of Violation.
10. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. The Sewage Treatment Plant (STP) Facility, owned by BCSA, is the subject of a VPDES Permit.
2. BCSA began conducting significant maintenance at the Facility from April 3 through April 5, 2006, which involved periodic shut-downs as BCSA replaced electronic panel box controls. High chlorine concentrations occurred during this time, likely due to the periodic shutdowns and extended recirculation of wastewater through the system. In fact, concentration average and concentration maximum for chlorine were reported to be 3.8 mg/l in April 2006, which is significantly over the legal requirement of 0.029 mg/l and 0.036 mg/l for concentration average and concentration maximum, respectively.
3. On the morning of April 6, restart of pumps after extended shutdown caused a wastewater surge that overflowed the system causing a discharge of highly-chlorinated wastewater into a small receiving stream, Hot Springs Run. BCSA personnel visually checked downstream to observe any problems after the overflow, and noted no problems. BCSA notified DEQ that an overflow occurred.
4. BCSA personnel conducted another inspection downstream three hours after the discharge occurred, and approximately 500 yards downstream BCSA personnel noted that approximately 30 to 40 small, finger-length minnows and similar-sized baitfish were found dead in the stream. Further search downstream, approximately ½ mile, indicated no other visible damage. BCSA also sampled the creek for dissolved oxygen and chlorine levels and detected no further problems.
5. BCSA reported the moderate fish kill and chlorine release to DEQ.
6. No cleanup was performed, as the flowing stream and subsequent rain over the weekend negated the utility of a cleanup, in light of the limited overflow.

7. BCSA was issued an NOV on May 22, 2006 for the reported fish kill, and was subsequently issued another NOV on June 9, 2006 for the reported chlorine violations (concentration average and maximum reported at 3.8 mg/l, respectively; permitted limits are 0.029 mg/l for conc. avg., and 0.036 mg/l conc. max.).
8. The discharge of highly-chlorinated wastewater, and associated fish kill resulting from the chlorine exceedence, is a violation of Virginia Code § 62.1-44.5 and 9 VAC 25-31-50 of the Virginia Administrative Code. Va. Code § 62.1-44.5 prohibits waste discharges or other quality alterations of state waters except as authorized by permit. Also, 9 VAC 25-31-50 provides that "except in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
3. BCSA agrees to enter into an Order, this document, and pay civil charges for the unpermitted discharge and associated fish kill.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a), (8d), and (11) orders BCSA, and BCSA agrees to pay a civil charge of **\$3,500.00** within 30 days of the effective date of this Order, in settlement of the violations cited in this Order:

Please send payment to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Either on a transmittal letter or as a notation on each check or money order, BCSA shall indicate that this payment is submitted pursuant to this Order and shall include BCSA's Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of BCSA, for good cause shown by BCSA, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein in Section C. This Order shall not preclude the Board or the Director from taking any

action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, BCSA admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. BCSA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. BCSA declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by BCSA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. BCSA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. BCSA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BCSA shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Valley Regional Office within 24 hours of learning of any condition above, which BCSA intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and BCSA. Notwithstanding the foregoing, BCSA agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. BCSA petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
 - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to BCSA.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve BCSA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. The undersigned representative of BCSA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind BCSA to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of BCSA.
- 13. By appropriate authorized signature below, BCSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of March 16th, 2007.

Ray D Owens
~~R. Bradley Chewning~~ VRO Regional Director
Department of Environmental Quality

BCSA agrees to the issuance of this Order.

By: Gene Q Phillips
Title: Administrator
Date: 11/16/06

Commonwealth of Virginia

City/County of Bath

The foregoing document was signed and acknowledged before me this

16th day of November, 2006, by GENE Q Phillips.
(name)

who is Administrator of BCSA, on behalf of said company.
(title)

My Wayne Winchman
Notary Public

My commission expires: December 31, 2006